FORM NLRB-4477

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION THIRTY-THREE

V-MIX CONCRETE, INC.1/

Employer

and

TEAMSTERS, CHAUFFEURS & HELPERS
LOCAL UNION NO. 627, AFL-CIO

Union

and

RANDY BOWEN

Petitioner

DECISION AND DIRECTION OF ELECTION

Case 33-RD-791

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a stipulation of facts, signed by all parties, was submitted to the undersigned in lieu of a hearing before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,2/ the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.3/

2. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.4/

4. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All ready-mix drivers, gravel drivers and mechanics employed by the Employer at its Washington, Illinois facility, but excluding office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations5/. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters, Chauffeurs & Helpers Local Union No. 627, AFL-CIO.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.,** 156 NLRB 1236 (1966); **N.L.R.B.** v. **Wyman-Gordon Company,** 394 U.S. 759 (1969)6/. Accordingly, it is hereby directed that within 7 days of the date of this Decision *two* copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the Officer-in-Charge for Subregion 33 who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the *33rd Subregion, Hamilton Square, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602*, on or before March 25, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by April 1, 2002.

Dated March 18, 2002
at: Peoria, Illinois

/s/ Ralph R. Tremain
Ralph R. Tremain, RD – Region 14

1/ The names of the Employer, Union and Petitioner appear as reflected in an all-party stipulation.

2/ The parties waived their right to a hearing and instead submitted a stipulation of facts. I have carefully considered the all-party stipulation and the briefs filed by the Employer and the Union. The Petitioner did not file a brief.

3/ The Employer is an Illinois corporation engaged in the business of supplying ready-mix concrete to commercial customers, with a facility located in Washington, Illinois. During the past calendar year, a representative period, the Employer purchased and received goods valued in excess of $50,000 directly from vendors located outside the State of Illinois. There are approximately 9 employees within the unit found appropriate herein.

4/ This case presents an issue of contract bar: whether the petition is barred by a collective bargaining agreement between the parties. To resolve this question, I must determine (1) whether a collective bargaining agreement assumed by a successor is a bar to an election even though the parties have not signed the agreement and (2) if so, whether the "three-year rule" applies, so that the agreement, with an original term of six years, operates as a bar only for its first three years. As discussed in detail below, I find that the parties' failure to assume the predecessor's collective bargaining agreement in writing removes the assumed agreement as a bar to an election. Great Atlantic & Pacific Tea Company, 197 NLRB 922 (1972); Appalachian Shale Products Co., 121 NLRB 1160, 1162-1163 (1958). I also find that even if the assumed agreement were deemed a contract for contract bar purposes, it only operated as a bar for so much of its term as does not exceed three years. General Cable Corp., 139 NLRB 1123 (1962). Accordingly, the petition, filed in the fourth year of the contract term, is not barred.

Background

The parties stipulated to the following facts: Effective February 1, 2001, the Employer, a successor to Curry Ready Mix of Washington, recognized the Union as the exclusive collective bargaining representative of its ready mix drivers, gravel drivers and mechanics ("the bargaining unit"). The recognition was extended verbally; the parties signed no recognition agreement or other

formal document specifically granting recognition. Pursuant to the recognition, the Employer assumed the collective bargaining agreement between the Employer's predecessor, Curry Ready Mix of Washington and the Union. Curry Ready Mix of Washington had previously assumed the collective bargaining agreement of its predecessor, Consolidated Ready Mix. The agreement is effective by its terms for the period May 1, 1998 through April 30, 2004. Although no representative of the Employer has ever executed the collective bargaining agreement, the Employer has continued to recognize the Union as the exclusive bargaining representative of the bargaining unit and to apply the terms of that agreement.

On about April 17, 2001, the Employer entered into a participation agreement governing the payments by the Employer into the Central States Southeast Area Pension and Health and Welfare Funds. The participation agreement was signed by the Employer's owner, V. Jay Veltman, and the Union's Recording Secretary, Victor J. Robb. The participation agreement is the only agreement bearing the signature of both the Employer and the Union.

1. The Collective Bargaining Agreement Is Not a Bar
Because The Employer Did Not Assume It In Writing

In order to serve as a bar to an election, a contract must be reduced to writing. An oral agreement does not constitute a bar. Empire Screen Printing, 249 NLRB 718 (1980); Sullivan & Sons Mfg. Corp., 105 NLRB 549 (1953). Even if the parties consider the agreement properly concluded and put into effect some of its important provisions, if the agreement is not signed, it does not act as a bar to an election. Appalachian Shale Products Co., 121 NLRB 1160, 1161 (1958). "[R]eal stability in industrial relations can only be achieved where the contract undertakes to chart with adequate precision the course of the bargaining relationship, and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems." Appalachian Shale Products Co., 121 NLRB 1160, 1163 (1958).

Separate and apart from the requirement that the contract be in writing is the requirement that the contract must be signed by all parties before the rival petition is filed. DePaul Adult Care Communities, 325 NLRB No. 132 (1998). The Board has held that parties "should be expected to adhere to this relatively simple requirement [of signing the contract], and that the creation of

exceptions * * * only serve[s] to render unduly complex a field that should not have become so involved." Appalachian Shale Products Co., 121 NLRB 1160, 1162 (1958). While the signatures need not be contained by a single document, where the signatures are on separate documents, it must be clear from the documents signed exactly what the terms of the agreement are. See, e.g., Brand Cheese, 307 NLRB 239 (1992).

In successor cases, in order for an assumed contract to act as a bar to an election, the assumption must be by express written agreement. Great Atlantic & Pacific Tea Company, 197 NLRB 922 (1972); American Concrete Pipe of Hawaii, 128 NLRB 720 (1960); M.V. Dominator, 162 NLRB 1514, 1516 (1967). It doesn't matter whether the signatures all appear on the same document, but the intent to assume the agreement must be clear. See, e.g., Kenneth and Harald Torsoe d/b/a Longview Terrace Co., 208 NLRB 699 (1974) (Employer assumed contract between predecessor and union by letter).

In this case, there is no dispute that the Employer never signed the assumed collective bargaining agreement or any other document expressly assuming that agreement. The parties' signatures on the participation agreement do not satisfy the requirement that the assumption of the collective bargaining agreement be in writing because nowhere in the participation agreement does the Employer assume or define the collective bargaining agreement. In fact, the participation agreement obligates the Employer to participate in the Central States pension fund, even in the absence of a collective bargaining agreement. Nor can it be argued that the participation agreement, standing alone, operates as an assumption of the collective bargaining agreement, for it does not provide the "certainty of terms and conditions of employment and the stability of labor relations" that the rule requiring the agreement to be in writing is designed to ensure. At best, it addresses only fringe benefit contributions. As the Employer correctly argues on brief, agreements limited to wages and fringe benefits cannot bar a petition. Stur-Dee Health Products, Inc., 248 NLRB 1100 (1980); J.P. Sand and Gravel Company, 222 NLRB 83 (1976).

The cases relied upon by the Union on brief are inapposite in that they generally involve documents which fully and clearly adopt a particular agreement, and in that none of the cases involved the application of the Board's contract-bar doctrine.

Accordingly, the assumed collective bargaining agreement in this case does not act as bar to an election because that assumption was not or in writing.

2. Even If The Employer Had Assumed The Collective Bargaining Agreement In Writing, It Would Act As A Bar For Only So Much Of Its Term As Does Not Exceed Three Years

Even if the Employer had assumed its predecessor's collective bargaining agreement in writing, it would still not bar the election because a contract having a fixed term of more than three years operates as a bar for as much of its term as does not exceed three years. General Cable Corp., 139 NLRB 1123 (1962); General Dynamics Corp., 175 NLRB 1035 (1969). To achieve its contract-bar objectives, the Board looks to the contract's fixed term or duration, because it is this term on the face of the contract to which employees and outside unions look to determine the appropriate time to file a representation petition. In a successor situation, the Board looks at the term of the agreement assumed. Kenneth and Harald Torsoe d/b/a Longview Terrace Co., 208 NLRB 699, 700 (1974). Here, the assumed agreement was effective from May 1, 1998 through April 30, 2004. The petition was filed February 12, 2002, well after the first three years of its terms. Accordingly, the assumed contract is not a bar to an election in this case.

5/ Your attention is directed to Part 103, Subpart B, Section 103.20 of the Board's Rules and Regulations, Series 8, as amended, which provides, inter alia, that employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election, that failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed, and that an employer shall be estopped from objecting to nonposting or late posting of Notices unless it notifies the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received the Notices. You may wish to review the above rule in its entirety so that you are fully aware of its complete contents and the obligations imposed by it.

6/ The full first and last names and addresses of all eligible voters must be filed by the employer. North Macon Health Care Facility, 315 NLRB 359 (1994).

Classification Index Code: 347-4040-1720-5050, 347-4010-2014-2000
Date Issued: 3/18/02